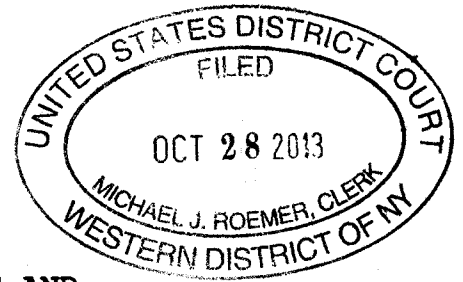


**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**



UNITED STATES OF AMERICA,

v.

ALBERTO ALFARO,

Defendant.

**REPORT AND
RECOMMENDATION**
13-CR-6012 (CJS)

By Text Order of Judge Charles J. Siragusa, dated January 16, 2013, all pretrial motions have been referred to this Court pursuant to 28 U.S.C. §§ 636(b)(1)(A)-(B). (Docket # 35). Currently before the Court is the defendant's motion to suppress the results of an identification procedure used by law enforcement. (Docket # 102).

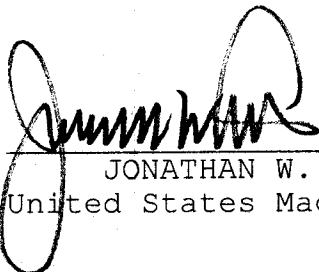
A suppression hearing was held on October 28, 2013. One witness, United States Customs and Border Protection Agent Alexander Abru, testified. The Court examined the original photographic array and a copy of the array was introduced without objection (Government Exhibit # 1) during the hearing. After the close of the hearing proof, the Court read into the record a detailed oral Report and Recommendation recommending that the defendant's motion to suppress the identification procedure be denied. This Order will serve to confirm the Court's oral Report and Recommendation. Should the defendant file objections to the Report and Recommendation, the transcript of the court's findings of facts and conclusions of law, as set forth on the record in open

Court on October 28, 2013, shall be transcribed and provided to Judge Siragusa.

Conclusion

Based on the foregoing and for the reasons stated on the record, it is my Report and Recommendation that the defendant's motion to suppress the identification be **denied**.

SO ORDERED.



JONATHAN W. FELDMAN
United States Magistrate Judge

Dated: October 28, 2013
Rochester, New York

Pursuant to 28 U.S.C. § 636(b)(1), it is hereby

ORDERED, that this Report and Recommendation be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of this Court within fourteen (14) days after receipt of a copy of this Report and Recommendation in accordance with the above statute and Rule 59(b)(2) of the Local Rules of Criminal Procedure for the Western District of New York.¹

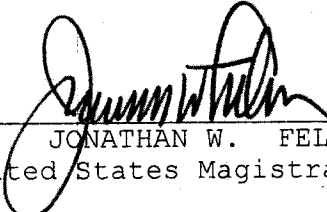
The district court will ordinarily refuse to consider on *de novo* review arguments, case law and/or evidentiary material which could have been, but was not, presented to the magistrate judge in the first instance. See, e.g., *Patterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985 (1st Cir. 1988).

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. *Thomas v. Arn*, 474 U.S. 140 (1985); *Wesolek v. Canadair Ltd., et al.*, 838 F.2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 59(b)(2) of the Local Rules of Criminal Procedure for the Western District of New York, "[w]ritten objections ... shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority." **Failure to comply with the provisions of Rule 59(b)(2) may result in the District Court's refusal to consider the objection.**

Let the Clerk send a copy of this Order and a copy of the Report and Recommendation to the attorneys for the Plaintiff and the Defendant.

SO ORDERED.



JONATHAN W. FELDMAN
United States Magistrate Judge

Dated: October 28, 2013
 Rochester, New York

¹ Counsel is advised that a new period of excludable time pursuant to 18 U.S.C. § 3161(h)(1)(D) commences with the filing of this Report and Recommendation. Such period of excludable delay lasts only until objections to this Report and Recommendation are filed or until the fourteen days allowed for filing objections has elapsed. *United States v. Andress*, 943 F.2d 622 (6th Cir. 1991); *United States v. Long*, 900 F.2d 1270 (8th Cir. 1990).